MAYER, BROWN & PLATT

COUNSELORS AT LAW

231 SOUTH LA SALLE STREET

CHICAGO, ILLINOIS 60604

312-782-0600
TELEX 253760
CABLE LEMAY

WASHINGTON, D C
LONDON
NEW YORK
DENVER
HOUSTON

March 21, 1983

Honorable Alexander L. Stevas
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: The Don't Bankrupt Washington Committee, Appellant v. Continental Illinois National Bank and Trust Company of Chicago, Seattle-First National Bank, Morgan Guaranty Trust Company of New York, and the United States of America, No. 82-1445

Dear Mr. Stevas:

The jurisdictional statement in the above-captioned case was filed on February 25, 1983. The motions to dismiss or affirm are due for filing in this Court within 30 days of that date. I am counsel of record for appellee Continental Illinois National Bank and Trust Company of Chicago, which will file a motion to dismiss or affirm on or before the due date.

In the motion to dismiss or affirm, we plan to make reference to certain materials that will not be readily available to the Justices. Accordingly, I am today lodging ten copies of those materials, along with copies of this cover letter, for the convenience of the Court.

The materials that we are lodging are as follows:

1. February 11, 1983 agreement signed by the Attorney General of the State of Washington pertaining to the appeal to this Court in the instant case.

2. February 25, 1983 letter of counsel of record for appellant distributed to all other counsel pursuant to Rule 10.4.

3. March 1, 1983 letter of counsel of record for appellant distributed to all other counsel of record, describing the parties to the present appeal.

4. February 18, 1982 motion of appellant to intervene in the district court in this case.

5. February 18, 1982 memorandum of appellant in support of its motion to intervene in the district court in this case.

6. February 17, 1982 affidavit of appellant filed in support of its motion to intervene in the district court in this case.

These materials should assist the Court in promptly determining the questions presented by the jurisdictional statement. I have served copies of this letter and the materials lodged herewith on all counsel required to be served.

Sincerely,

Franklin P. Auwarter

Counsel of Record for
Appellee Continental
Illinois National Bank
and Trust Company of
Chicago

cc: Benjamin W. Heineman, Jr.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Honorable Rex E. Lee
Solicitor General
Department of Justice
Washington, D.C. 20530

William R. Squires
Davis, Wright, Todd, Riese
& Jones
4200 Seattle-First National Bank Bldg.
Seattle, Washington, 98154

Kenneth O. Eikenberry
Attorney General
State of Washington
415 General Administration Bldg. AX-02
Olympia, Washington 98504

OFFICE OF THE ATTORNEY GENERAL

AGREEMENT BETWEEN STATE OF WASHINGTON AND THE WASHINGTON PUBLIC POWER SUPPLY SYSTEM

Preamble

On January 10, 1983, the United States Court of Appeals for the Ninth Circuit (# 82-3404) affirmed the conclusion of the United States District Court for the Western District of Washington in Continental Illinois National Bank and Trust Co. of Chicago, et al. v. State of Washington, et al. and Don't Bankrupt Washington Committee, Intervenor, (C82-94T) and United States v. State of Washington and Don't Bankrupt Washington Committee, Intervenor, (C82-395T) concluding that the contract clause of the United States Constitution renders the voter approval provisions of Initiative 394 (chapter 6, Laws of 1981, 2nd Ex. Sess.) not applicable to the financing of construction of Washington Public Power Supply System's Projects 1, 2, and 3. The District Court concluded that the cost effectiveness study requirements of Initiative 394 are not severable and, therefore, do not apply to those projects. The Ninth Circuit Court of Appeals did not address that conclusion on the assumption that such cost effectiveness studies were being undertaken.

The Washington Public Power Supply System is not a party to the above-referred to litigation but is directly affected by the results thereof and needs a prompt, final resolution of that litigation.

The State of Washington in defending the policy determination made by the voters of this state in enacting Initiative 394, must consider whether to seek judicial review by the United States Supreme Court. In making that consideration, the state must assess the opportunity to achieve a modification or reversal of the determination made by the Ninth Circuit Court of Appeals, the changes and circumstances which have occurred by virtue of the passage of Initiative 394, and the consequences to the citizens of the state by continuing this litigation.

The parties to this agreement have concluded that it is in the mutual interests of the State, its citizens, and the Washington Public Power Supply System to reach the following agreement.

Obligations by the Washington Public Power Supply System

The Washington Public Power Supply system agrees, covenants, and obligates itself prior to the issuance of any bonds of indebtedness on Projects 1, 2 or 3 to:

(1) Determine the anticipated costs of construction of the project;

(2) Select, subject to the approval of the State Finance Committee, an independent consultant to conduct a cost-effectiveness study pertaining to the energy project under consideration which is the subject matter of the proposed bonded indebtedness, and to provide the independent consultant with adequate resources to conduct the study;

(3) The independent consultant shall prepare a comprehensive cost-effectiveness study with reference to the project and shall include as part of that report a summary identifying:

(a) the name, location, and type of major public energy project, expressed in common terms;

(b) the dollar amount and type of bonds being requested;

(c) if the bond issuance is intended to finance the acquisition of all or a portion of the project, the anticipated total cost of the acquisition of the project;

(d) if the bond issuance is intended to finance the planning or construction of all or a portion of the project, the anticipated total cost of construction of the project;

(e) the projected average rate increase for consumers of the electricity to be generated by the project. The rate increase shall be that which will be necessary to repay the total indebtedness incurred for the project, including estimated interest;

(f) a summary of the cost-effectiveness study;

(g) the anticipated functional life of the project;

(h) the anticipated decommissioning costs of the project.

(4) One hundred copies of said study must be submitted to the Secretary of State, and five copies to the Washington State Energy Office.

(5) The study shall be available for public review and comment, including review and comment by the Washington State Energy Office, for thirty days.

(6) After the period of availability for public review and comment the consultant shall prepare a final draft of the study which includes public comment, if any. The final draft shall note and respond to any comments transmitted to the consultant by the Washington State Energy Office. The said final report shall be promptly filed with the Secretary of State.

The parties recognize that the cost-effectiveness studies for Projects 2 and 3 are substantially completed and the period for public comment on the same has expired. Therefore, upon the completion of the final draft and the acceptance of the same, the only remaining obligation is to promptly file the final draft of the studies with the Secretary of State.

Washington Public Power Supply System further agrees and covenants that if Projects 4 and 5, which have been terminated, are revived under the ownership of or financing by the Power Supply System that it will, irrespective of whether Initiative 394 applies to such projects, comply with the cost-effectiveness study requirements set forth in this contract for Projects 1, 2, and 3.

If costs of construction exceed the anticipated cost of construction upon which the cost-effectiveness study was predicated, then another cost-effectiveness study must be made prior to issuing bond indebtedness for financing such additional costs. Such an additional cost-effectiveness study requirement is required as a condition precedent to the issuance of bonded indebtedness in excess of the amount identified as the cost of construction upon which the prior cost effectiveness study was predicated.

Terms used in this contract shall have the meaning ascribed to them by definitions set forth in § 3, chapter 6, Laws of 1981, 2nd Ex. Sess.

Agreement by the State of Washington

The Attorney General as counsel for the State of Washington and state officers named as parties in Continental Illinois National Bank and Trust Co. of Chicago, et al. v. State of Washington, et al. and Don't Bankrupt Washington Committee, Intervenor, and United States v. State of Washington and Don't Bankrupt Washington Committee, Intervenor, Ninth Circuit Court of Appeals #82-3404, having considered all matters relating to the availability of review by the United States Supreme Court and the contractual undertaking by the Washington Public Power Supply System under this agreement, hereby promises and agrees not to seek review by the United States Supreme Court. This agreement does not preclude the State from participating in further proceedings in this litigation if the court should order further proceedings nor does it preclude the state from expressing its views to the United States Supreme Court if the Court accepts for review that which is sought by any other party to the litigation.

AGREED TO THIS 11th day of February, 1983.

Robert L. Ferguson
Washington Public Power
Supply System

Ken Eikenberry
Attorney General
State of Washington

SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202: 429-4000
TELEX 89-463

ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60603
TELEPHONE 312: 853-7000
TELEX 25-4364

2049 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
TELEPHONE 213: 553-8100
TELEX 18-1391

9 HOLLAND PARK
LONDON, W11 3TH, ENGLAND
TELEPHONE 01: 727-0132
TELEX 21781

P.O. BOX 190
MUSCAT, SULTANATE OF OMAN
TELEPHONE 722-411
TELEX 5266

P.O. BOX 4619
DEIRA, DUBAI - U.A.E.
TELEPHONE 9714-280194
TELEX 47216

Founded in 1866 as
Williams & Thompson

February 25, 1983

Mr. Alexander L. Stevas
Clerk
United States Supreme Court
Washington, D.C. 20543

Re: State of Washington, et al. v. Continental Illinois National Bank & Trust Company, et al.; and State of Washington, et al. v. United States of America

Dear Mr. Stevas:

Pursuant to Rule 12.3, Rules of the Supreme Court, I am hereby docketing the above-captioned case in this Court on behalf of The Don't Bankrupt Washington Committee, intervenor-appellant, by filing with you an appearance form, a check for $200 as required by Rule 45(a), 40 copies of a jurisdictional statement, and a certificate of service as required by Rule 28.

Pursuant to Rule 10.4 of this Court, this letter shall also serve to inform you that it is the belief of intervenor-appellant that the State appellants below (the State of Washington, the Governor of Washington, John Spellman, the Secretary of State of Washington, Ralph Munro, and the Attorney General of Washington, Kenneth Eikenberry) have no interest in the outcome of this appeal and do not intend to file a jurisdictional statement. A copy of this letter -- which constitutes the notice required by Rule 10.4 -- is also being served on the parties below as indicated in the attached certificate of service.

Thank you for your cooperation in this matter.

Sincerely,

Benjamin W. Heineman, Jr.

BWH/kr
Enclosures

cc: The Solicitor General
Richard K. Willard
William R. Squires
Franklin P. Auwarter
Kenneth O. Eikenberry

SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
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LONDON, W11 3TH, ENGLAND
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TELEX 21781

P.O. BOX 190
MUSCAT, SULTANATE OF OMAN
TELEPHONE 722-411
TELEX 5266

P.O. BOX 4619
DEIRA, DUBAI - U.A.E.
TELEPHONE 9714-283194
TELEX 47216

Founded in 1866 as
Williams & Thompson

March 1, 1983

The Honorable Rex E. Lee
Solicitor General of the United States
United States Department of Justice
Room 5143
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Franklin P. Auwarter, Esq.
Mayer, Brown & Platt
231 South LaSalle Street
Chicago, Illinois 60604

William R. Squires, Esq.
Davis, Wright, Todd, Riese & Jones
4200 Seattle-First National Bank Bldg.
Seattle, Washington 98154

Re: The Don't Bankrupt Washington Committee v. Continental Illinois National Bank and Trust Company, Seattle-First National Bank and Morgan Guaranty Trust Company of New York, and the United States of America, No. 82-1445

Dear Messrs. Lee, Auwarter and Squires:

As required by the rules of the Supreme Court, I am enclosing a notice of The Don't Bankrupt Washington Committee's appeal in the Supreme Court in the above-captioned case. I am also enclosing an appearance form.

Since the State appellants have decided not to appeal, the Supreme Court Clerk's office asked the Committee to change the cover of the Jurisdictional Statement. I am also, therefore, enclosing a photo-copy of the revised cover. Except for the change on the cover, and a small conforming change on page one of the Jurisdictional Statement, the

copies of the Jurisdictional Statement served on you are identical to those now in the possession of the Court. (The Jurisdictional Statement was docketed with the Court on February 25, 1983 as required by the stipulation between the parties, and the copies with the revised cover were presented to the Clerk on February 28, 1983.)

Sincerely,

Ben W. Heineman, Jr.

BWH/kr
Enclosures

cc: Richard K. Willard, Esq.

COPY RECEIVED
FEB 18 1982
By _____

RECEIVED
FEB 19 1982
Office of Clerk
U. S. District Court
Tacoma, Washington

RECEIVED
JUDGE'S OFFICE
FEB 18 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, et al.,

Plaintiffs,

v.

THE STATE OF WASHINGTON, et al.,

Defendants.

THE DON'T BANKRUPT WASHINGTON COMMITTEE,

Applicant for Intervention as Defendant

Civil Action No. C 82-94 T

MOTION OF THE DON'T BANKRUPT WASHINGTON COMMITTEE TO INTERVENE AS A DEFENDANT

The Don't Bankrupt Washington Committee moves for leave to intervene as a defendant in the above-captioned action

Califano, Ross & Heineman
1575 Eye Street, N.W.
Washington, D.C. 20005
(202) 789-8800

Riddell, Williams, Bullitt & Walkinshaw
4400 Seattle-First National Bank Building
1001 Fourth Avenue
Seattle, Washington 98154
(206) 624-3600

LAW OFFICES
CALIFANO, ROSS & HEINEMAN
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

pursuant to Federal Rule of Civil Procedure 24(a) (intervention of right) or, alternatively, pursuant to Federal Rule of Civil Procedure 24(b) (permissive intervention).

A Memorandum in support of this Motion to Intervene and other supporting materials are attached and are incorporated by reference herein. A Proposed Answer to Plaintiffs' Complaint is also being filed with this Motion as required by Federal Rule of Civil Procedure 24(c).

This suit challenges the validity of Initiative 394, incorporated in Chapter 6, 2nd Ex. Sess., Laws of 1981. As the organization that drafted, filed and sponsored Initiative 394 and that led the campaign for its passage, The Don't Bankrupt Washington Committee has the right to intervene under Rule 24(a) because it has a fundamental interest in the subject of the litigation, because that interest will obviously be impaired if Initiative 394 is declared unlawful and because its interest will not be adequately represented by the named defendants, none of whom supported the Initiative and one of whom publicly opposed it. Alternatively, the Committee should be allowed to intervene permissively under Rule 24(b) because it will present issues of law and fact in common with those likely to be joined between plaintiffs and the named defendants.

Counsel for the named defendants have stated to counsel for the Don't Bankrupt Washington Committee that the named defendants will, in the very near future, file a memorandum in support of the Committee's motion to intervene as defendant.

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Respectfully submitted,

Stimson Bullitt

Joseph A. Califano, Jr.

Benjamin W. Heineman, Jr.

John A. Siliciano

Stimson Bullitt
Riddell, Williams,
Bullitt & Walkinshaw
4400 Seattle-First National
Bank Building
1001 Fourth Avenue
Seattle, Washington 98154
(206) 624-3600

Joseph A. Califano, Jr.
Benjamin W. Heineman, Jr.
John A. Siliciano
Califano, Ross & Heineman
1575 Eye Street, N.W.
Washington, D.C. 20005
(202) 789-8800

Counsel for
The Don't Bankrupt Washington Committee,
Applicant for Intervention As Defendant

Dated: February 18, 1982

RECEIVED

FEB 18 1982

Office of Clerk
U. S. District Court
Tacoma, Washington

COPY RECEIVED

FEB 18 1982

DAVIS, WRIGHT, TODD, RIESE & JONES

By _____

RECEIVED
JUDGE'S OFFICE

FEB 18 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, et al., Plaintiffs, v. THE STATE OF WASHINGTON, et al., Defendants, THE DON'T BANKRUPT WASHINGTON COMMITTEE, Applicant for Intervention.	Civil Action No. C 81-94T AFFIDAVIT OF STEVE ZEMKE

STATE OF WASHINGTON)
) ss
County of)

STEVE ZEMKE, being first duly sworn upon oath, does depose and say:

1. I am a resident of the State of Washington. For approximately two years I have been involved nearly full-time in the effort to enact Initiative 394 and its predecessor, Initiative 385. I was the initial sponsor of Initiative 394, on behalf of the Don't Bankrupt Washington Committee. I am the

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[illegible]
1919 EYE STREET, N.W.
WASHINGTON, D.C. 20006

Chairperson of the Don't Bankrupt Washington Committee, a corporation duly organized under the Laws of the State of Washington. I am also the registered agent for the Committee.

2. As a result of my intensive work with the Don't Bankrupt Washington Committee, I know, in minute detail, the history of Initiative 394 and the crucial role the Don't Bankrupt Washington Committee played in securing passage of the Initiative.

3. Chronologically, the following major steps led to the passage of Initiative 394 and its enactment into law as Chapter 6, Second Ex. Sess., Laws of 1981.

4. In the spring of 1980, an effort was mounted to place Initiative 385 on the November, 1980 election ballot. Initiative 385 was in many respects the predecessor of Initiative 394. That Initiative, like Initiative 394, was intended to place limits on the ability of joint operating agencies engaged in the construction of major public energy projects --and in particular on the Washington Public Power Supply System (WPPSS) -- to incur enormous debts and cost overruns without any accountability to those who would ultimately bear the burdens of such debts and without sufficient attention to the cost-effectiveness of the proposed projects.

5. The effort to collect sufficient signatures to place Initiative 385 on the ballot was, however, unsuccessful. As a consequence, many of those who had supported Initiative 385 held a series of meetings and discussions aimed at

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[illegible]
[illegible]

mounting a similar effort in 1981. As a result of these discussions, the Don't Bankrupt Washington Committee was formed in December 1980. See Exhibit A (attached). In order to participate in a second initiative effort, the Don't Bankrupt Washington Committee registered as a political committee with the Public Disclosure Commission of the State of Washington on December 24, 1980 pursuant to RCW 42.17. See Exhibit G (attached).

6. At the time it was formed, the Don't Bankrupt Washington Committee was an unincorporated association of individuals. Virtually all were utility ratepayers who could be directly affected by the WPPSS projects, as were most of our subsequent paid workers, volunteers and donors. Policy decisions of the Committee were made by an Ad Hoc Steering Committee. On March 20, 1981, the Committee was incorporated as Don't Bankrupt Washington. A certified copy of the Articles of Incorporation is attached hereto as Exhibit 1.

7. In preparing a new Initiative, the Don't Bankrupt Washington Committee solicited views and advice from approximately 300 individuals and groups, including members of the State Legislature and the Governor of Washington. During this period, the Committee also actively supported bills pending in the State Legislature which, if passed, might preclude the need for another initiative drive. In particular, the Committee sought passage of a bill that would subject the annual budget of WPPSS to approval by the State Legislature.

8. In the event that such legislation was not passed, the Committee, in January, 1981, prepared a draft of a new Initiative and began to seek funds for another State-wide effort. Such an initiative would serve both the interests of the ratepayers affected by the WPPSS projects and of the WPPSS bondholders.

9. On January 6, 1981, I filed an original draft of the proposed Initiative with the Secretary of State. See Exhibit B (attached). By letter of that date, the Secretary of State acknowledged receipt of the proposed Initiative.

10. On January 6, 1981, the measure was forwarded to the State Code Reviser, pursuant to RCW 29.79.015, for his review. The Code Reviser provided the Committee with various stylistic and substantive comments. Based on these comments and several meetings with the Code Reviser, a second and later a third draft of the proposed Initiative were produced. The third draft constituted Initiative 394 as it later appeared on petitions, election ballots, and as it was enacted into law. The Code Reviser's certificate of review is attached hereto as Exhibit C.

11. The third and final draft of the proposed Initiative was then filed with the Secretary of State along with the certificate of review from the Code Reviser. The proposed draft was given the formal title of Initiative Measure 394. A copy of the measure was then transmitted to the Attorney General for the formulation of a ballot title. The measure was given a ballot title by the Office of the Attorney General on January 30, 1981. See Exhibit D (attached).

12. Upon receipt of notice from the Secretary of State that a ballot title had been established, the Don't Bankrupt Washington Committee had 75,000 Initiative petitions printed at its expense. The cost of printing these petitions was several thousand dollars.

13. After the State Legislature failed to enact the legislation supported by the Don't Bankrupt Washington Committee, the effort was launched to obtain the 160,000 signatures needed to place Initiative 394 on the ballot. As part of this effort, the Don't Bankrupt Washington Committee enlisted the aid of approximately 2,000 volunteers, as well as the services of four full time staff members, to circulate the petitions for collection of signatures. Coordinators were appointed and Steering Committees were formed in all the major Counties of Washington. The canvassing effort lasted several months, encompassed the entire State and cost $25,000. The result of this effort was the timely filing of 11,470 petitions containing 185,984 signatures with the Secretary of State by July 3, 1981.

14. The petitions were then reviewed and the signatures counted by the Secretary of State. The Secretary of State certified the sufficiency of the petitions pursuant to RCW 29.79.230 on July 30, 1981.

15. The Office of the Attorney General prepared an explanatory statement relating to Initiative Measure 394, pursuant to RCW 29.81.020. See Exhibit E (attached). Additionally, committees were appointed pursuant to RCW

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29.81.050 to prepare arguments for and against approval of the measure. As the chairperson of the Don't Bankrupt Washington Committee, I was one of the persons appointed to the advisory committee to assist in the preparation of the Statement for Initiative 394 and of the Rebuttal of the Statement Against Initiative 394. A true and correct copy of the two pages of the official voter's pamphlet containing these statements is attached hereto as Exhibit F.

16. Subsequently, the Don't Bankrupt Washington Committee embarked on an expensive and time consuming effort to secure passage of Initiative 394. As part of this effort, the Committee solicited and received approximately $215,000 in contributions from about 3,400 donors. These contributions were used to hire media and polling consultants, to purchase television and radio time, to pay for leaflets and other printings, and to pay for seven full-time and several part time staff members. Approximately 2,000 volunteers assisted the Don't Bankrupt Washington Committee during the campaign. The Committee also arranged for speakers and sought support for the measure in a wide variety of forums. For example, representatives of the Committee engaged in television and radio debates and wrote newspaper columns.

17. None of the defendants named in plaintiff's Complaint actively supported the Initiative. Governor Spellman publicly opposed the Initiative.

18. At the election held November 3, 1981, Initiative Measure 394 received 532,178 votes for its passage (58 percent of those voting) and 384,419 votes against its passage (42

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percent of those voting). On December 3, 1981, the Secretary of State certified the results of the election and the Governor issued his proclamation declaring its passage, pursuant to RCW 29.62.130. See Exhibit H (attached).

19. Because certain well-funded groups had strongly opposed passage of Initiative 394 and reportedly spent as much as $1.3 million during the campaign, the Don't Bankrupt Washington Committee believed that a court challenge to the Initiative was likely. The officers and directors of the Committee recognized that as individuals and as an organization they had a special obligation to the thousands of supporters of the Initiative to whom they had made personal appeals and from whom they had received contributions of time, effort, and money. The Committee recognized a similar obligation to the hundreds of thousands of voters who had participated directly in the initiative process and who had supported the measure at the polls. To discharge these obligations, the Don't Bankrupt Washington Committee determined early in 1982 that it would seek to intervene as a defendant in any suit challenging the validity of Initiative 394.

20. Utility ratepayers, who are ultimately responsible for paying for the cost of constructing WPPSS Projects 1-3, have been active in the work of the Committee and have contributed money to the Committee. At least one bondholder of WPPSS Project 1 Bonds donated money to the campaign and spoke out at debates and in other forums in support of the Initiative. It is likely that other holders of WPPSS bonds for Projects 1-3 were among the 185,984 who signed petitions to get

LAW OFFICES
[illegible]

Initiative 394 placed on the ballot, were among the 3400 individuals who donated money to the Committee, or were among the 532,178 citizens who voted for the Initiative.

DATED This 17 day of February, 1982.

Steve Zemke
STEVE ZEMKE

SUBSCRIBED and SWORN to before me this 17th day of February, 1982.

Thomas Bullitt
NOTARY PUBLIC in and for the State of Washington residing at Seattle

LAW OFFICES
[illegible]

Exhibit A

Don't Bankrupt Washington!

Support a Vote on Energy Spending.

Dear Friend of Initiative 385,

Little has changed with WPPSS (the Washington Public Power Supply System) since last spring's effort to put I-385 on the Nov. ballot. Little, that is, except ever rising costs. A month ago costs jumped $1.4 billion alone, to a new high of $17.3 billion for the 5 nuclear plants under construction. Without public control over further bond sales, such as I-385 proposed, these costs will continue to rapidly rise.

We believe that something must be done to end WPPSS's blank check spending policy. Few of us can afford the drastic rate increases that will be needed for the next 30 years to pay off all the billions of dollars WPPSS is spending in our name.

That is why we have decided to continue last spring's Initiative 385 campaign by SAVE$ (Support a Vote on Energy Spending) to require voter approval of any further bond sales by WPPSS. We have changed our name to the "Don't Bankrupt Washington" Committee. A redrafted version of I-385 will be filed in January as a new initiative. Over 160,000 signatures will need to be collected by July to place the initiative on the Nov. 1981 ballot.

We need your help and support now to have a successful campaign. To print up initiatives, open an office, pay staff, and do mailings, about $5,000 will be needed by the end of January. Will you help us to bring WPPSS under voter control by sending us a generous contribution today? Also please check off on the volunteer form how else you can help us.

Thank you.

Sincerely,

Steve Zemke

Steve Zemke
Chairperson
Don't Bankrupt Washington Committee

P.S. Please consider a contribution of $25 or more. Your Christmas gift to our campaign will have a long lasting effect on keeping down future electric rate increases. Checks should be made out to: "Don't Bankrupt Washington"

Exhibit A

Exhibit B

FILED
JAN - 6 1981
SECRETARY OF STATE
STATE OF WASHINGTON

AFFIDAVIT FOR

PROPOSED INITIATIVE TO THE PEOPLE

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

Steve Zemke, being first duly sworn, says: he is a duly registered and legal voter of the state of Washington residing at 2205 E. Howe, Seattle, WA 98112 and herewith submits a proposed initiative measure to the people in the form appended hereto and requests the Secretary of State to file the same, assign it an initiative measure number and that the Attorney General supply a ballot title. Tel no 324-4362

Steve Zemke

SUBSCRIBED AND SWORN to before me this 6 day of January, 1981.

Steve Zemke, Chairperson
Don't Bankrupt Washington
1812 E. Madison
Seattle, WA 98122

(206) 324-3185

Notary Public in and for
the state of Washington,
residing at _____.

Exhibit B

Exhibit C

FILED
JAN 2 0 1981
SECRETARY OF STATE
STATE OF WASHINGTON

OFFICE OF THE CODE REVISER
LEGISLATIVE BUILDING
OLYMPIA, WA. 98504

IN THE MATTER OF PROPOSED
INITIATIVE TO THE PEOPLE
relating to energy facilities

PETITIONER: Mr. Steve Zemke
2205 East Howe Street
Seattle, Washington 98122

CERTIFICATE OF REVIEW (pursuant to RCW 29.79.015)

I hereby certify that the petitioner's proposal was received in the office of the Code Reviser on January 6, 1981, that I have reviewed the proposal for form and style and that the recommendations thereon, if any, have been communicated to the petitioner.

Dated January 13, 1981

DENNIS W. COOPER
Code Reviser

By

STEPHEN L. JONES
Assistant Code Reviser

Exhibit D

OFFICE OF THE ATTORNEY GENERAL
Ken Eikenberry, Attorney General
Temple of Justice, Olympia, Washington 98504

January 30, 1981

FILED
JAN 30 1981
SECRETARY OF STATE
STATE OF WASHINGTON

Honorable Ralph Munro
Secretary of State
Legislative Building
Olympia, Washington 98504

ATTN: John J. Pearson
Asst. Supervisor of Elections

Re: Ballot Title for Initiative Measure No. 394

Dear Sir:

Pursuant to the provisions of RCW 29.79.040, as amended by section 2, chapter 118, Laws of 1973, 1st Ex. Sess., this office submits the following ballot title for Initiative Measure No. 394:

Shall public agencies obtain voter approval prior to issuing bonds for the construction or acquisition of major public energy projects?

Yours very truly,

FOR THE ATTORNEY GENERAL

MALACHY R. MURPHY
Deputy Attorney General

mg

Exhibit D

OFFICE OF THE ATTORNEY GENERAL

September 9, 1981

Honorable Ralph Munro
Secretary of State
Legislative Building
Olympia, Washington 98504

ATTN: Don Whiting
Elections Supervisor

Dear Sir:

Pursuant to our responsibilities under RCW 29.79.060 and .076 and RCW 29.81.020, we herewith submit the following explanatory statement for Initiative No. 394:

EXPLANATORY STATEMENT:

The law as it now exists:

While the state and local governmental units must, under certain circumstances, obtain voter approval to raise money through the issuance of general obligation bonds, there is no such requirement of voter approval for the issuance of revenue bonds payable only from the revenues derived from the specific project. The issuance of such revenue bonds now includes the financing of the construction of public energy projects.

Effect of Initiative 394 if approved into law:

This initiative would require a public agency of the state to obtain approval from its voters before selling any bonds to finance the construction or purchase of a major public energy project. A "major public energy project" is defined by the initiative to mean a facility or addition to a facility which generates more than 250 megawatts of electrical power. Projects under construction by July 1, 1982 would not be covered except any WPPSS projects, the construction budget of which exceeds certain limits.

If the applicant to build or purchase a project is a public utility district, a joint operating agency, a city,

OFFICE OF THE ATTORNEY GENERAL

or a county, an election to decide if the funds for the project may be expended shall be held among the voters of that jurisdiction, or the voters of the local government entities which comprise the joint operating agency. If the applicant is a public agency other than those listed above, the election shall be conducted on a statewide basis. The election would be for the purpose of setting the maximum amount of bond financing which is authorized for a major public energy project. Prior to the election, the applicant would have to make available for public comment a cost effectiveness study prepared by an independent consultant. The study would examine the project and the ability to meet electrical power demands of intended customers at a reasonable cost compared with other alternatives. Supporters and opponents of the project would be permitted to present their views in a Voters' Pamphlet produced by the Secretary of State. Public comment and other basic information about the project would also be included in the Voters' Pamphlet.

Very truly yours,

FOR THE ATTORNEY GENERAL

MALACHY R. MURPHY
Deputy Attorney General

mg

Initiative Measure 394

TO THE PEOPLE

Official Ballot Title:

Shall public agencies obtain voter approval prior to issuing bonds for the construction or acquisition of major public energy projects?

The law as it now exists:

While the state and local governmental units must, under certain circumstances, obtain voter approval to raise money through the issuance of general obligation bonds, there is no such requirement of voter approval for the issuance of revenue bonds payable only from the revenues derived from the specific project. The issuance of such revenue bonds now includes the financing of the construction of public energy projects.

Statement for

WHAT I-394 DOES

Initiative 394 requires that a public agency like the Washington Public Power Supply System (WPPSS) obtain voter approval before it could issue more bonds to build or acquire major public power projects.

WHY I-394?

Spending on WPPSS's five nuclear projects has grown from its first estimate of $4.1 billion to the current estimate of almost $24 billion dollars. There is now no direct accountability to the ratepayers who will pay the bills for WPPSS's runaway spending.

WHO'S SPENDING?

Most of WPPSS's spending spiral is caused by contractor cost overruns. Faulty management, flawed engineering and contract loopholes have driven up the costs of the projects. Neither the WPPSS Board nor the state legislature has been able or willing to control these contractors to halt their runaway spending.

WHO DO YOU TRUST?

People clearly should have the right to vote yes or no before public utilities sell bonds, since these bonds will have to be repaid through higher electricity rates. Washington's voters are quite capable of making a judgment on these issues just as they vote on bonds for school districts, sewer and water projects. We ought to trust the people to make these decisions, rather than the inexperienced WPPSS Board or the state legislature.

I-394 MAKES WPPSS ACCOUNTABLE TO YOU

Initiative 394 makes WPPSS and its contractors directly accountable to the ratepayers who will pay the bills. I-394 forces WPPSS to reform its management, scrutinize its contractors and halt this runaway spending of your money.

VOTE YES ON I-394!

Rebuttal of Statement against

Opponents misrepresent Initiative 394. The issue is *your right to vote* to control public spending. 1) Initiative 394 enables Washington voters to do what the WPPSS Board has failed to do—stop contractor cost overruns on WPPSS nuclear projects. 2) Initiative 394 holds WPPSS accountable by requiring *voter approval* of WPPSS construction budget before WPPSS spends YOUR money. 3) Initiative 394 assures a strong Washington economy, by preventing WPPSS from putting *you* in debt over your head.

Voters Pamphlet Statement Prepared by:

BLITHE BEDDER, State Senator; AL WILLIAMS, State Senator; NITA RINEHART, State Representative.

Advisory Committee: TOM BAKER, President, District 751, International Association of Machinists and Aerospace Workers; PAT FLOYD, Commissioner, Jefferson County Public Utility District; JOLENE UNSOELD, Citizen Lobbyist; ERIC SMITH, President, Local 1105, Retail Clerks Union; STEVE ZEMKE, Chairperson, Don't Bankrupt Washington Committee.

The effect of Initiative 394, if approved into law:

This initiative would require a public agency of the state to obtain approval from its voters before selling any bonds to finance the construction or purchase of a major public energy project. A "major public energy project" is defined by the initiative to mean a facility or addition to a facility which generates more than 250 megawatts of electrical power. Projects under construction by July 1, 1982 would not be covered except any WPPSS projects, the construction budget of which exceeds certain limits.

If the applicant to build or purchase a project is a public utility district, a joint operating agency, a city, or a county, an election to decide if the funds for the project may be expended shall be held among the voters of that jurisdiction, or the voters of the local government entities which comprise the joint operating agency. If the applicant is a public agency other than those listed above, the election shall be conducted on a state-wide basis. The election would be for the purpose of setting the maximum amount of bond financing which is authorized for a major public energy project. Prior to the election, the applicant would have to make available for public comment a cost effectiveness study prepared by an independent consultant. The study would examine the project and the ability to meet electrical power demands of intended customers at a reasonable cost compared with other alternatives. Supporters and opponents of the project would be permitted to present their views in a Voters' Pamphlet produced by the Secretary of State. Public comment and other basic information about the project would also be included in the Voters' Pamphlet.

NOTE: The ballot title and explanatory statement were written by the Attorney General as required by state law. The complete text of Initiative Measure 394 begins on page 14.

Statement against

Initiative 394 would create a costly, bureaucratic nightmare with disastrous consequences for every taxpayer, electricity user, worker and business in Washington.

The initiative creates complicated and expensive restrictions which may terminate major energy projects now under construction and those planned for the future. It restricts every type of major energy project, including hydro, nuclear, coal or alternative energy sources such as wind, solar and geothermal. Cutting through the nearly 2,000 words of the proposal, here is what it does:

- It requires frequent elections on energy bond issues costing as much as $1,000,000 per election – paid for by the taxpayers.
- It requires costly government studies, comparison projections, decommissioning analyses, and a special printing of millions of pamphlets – paid for by taxpayers and ratepayers.
- Without new generating capacity from plants now under construction, we face a devastating shortage of electricity in the near future. It will mean the immediate loss of thousands of jobs and the ultimate loss of hundreds of thousands of jobs as industry is faced with factory closures or limited production schedules because of severe energy shortages.

The cost of Initiative 394 could be staggering – at stake is the energy and economic future of Washington. As taxpayers and ratepayers, it will cost us an adequate supply of energy, hundreds of thousands of jobs, millions of dollars in elections and studies and could cost us billions of dollars in uncompleted energy projects and construction delays.

VOTE NO ON 394. IT'S A VERY EXPENSIVE PROPOSITION

Rebuttal of Statement for

I-394 is *not* a WPPSS measure. I-394 will *not* affect WPPSS management. I-394 does *not* scrutinize contractors. *I-394 does force* expensive, repeated elections which make no sense. Voters not affected could vote, while affected voters may be prohibited from voting. *I-394 does force* a shutdown of construction of vitally needed energy projects. *I-394 does jeopardize* every type of major energy project including vitally needed hydro, coal, nuclear and wind projects. VOTE NO on 394!

Voters Pamphlet Statement Prepared by:

RAY ISAACSON, State Representative; JACK SILVERS, Master, Washington State Grange; RANDY A. ROACH, Attorney primarily engaged in construction and surety bonding law.

Advisory Committee: JULIA BUTLER HANSEN, Former Member of Congress; MINER H. BAKER, Economist; ROBERT DILGER, Executive Secretary, Washington State Building and Construction Trades Council, AFL-CIO; DOROTHY KUNE, Civic Leader; WELLS McCURDY, Past Chairman, Association of Washington Business.

Exhibit G

TO THE STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION
[illegible] EVERGREEN PLAZA BUILDING
711 CAPITOL WAY
OLYMPIA, WASHINGTON [illegible]
PHONE: [illegible]

PDC FORM **C-1** REV 9/77

REGISTRATION STATEMENT FOR CANDIDATES AND POLITICAL COMMITTEES

THIS SPACE FOR OFFICE USE

PU DATE	DATE RECVD
DEC 23 1980	DEC 24 1980

Registration and campaign financial reporting is required for all political committees, clubs and similar organizations and for candidates for any elective office not expressly exempt. See instructions for exempt offices.

1. CANDIDATE OR COMMITTEE NAME
DON T BARKRUPT WASHINGTON COMMITTEE
ADDRESS 2205 E. HOWE
CITY SEATTLE, WA ZIP 98112

DATE PREPARED DEC. 15, 1980
FILE NUMBER

2. CHECK APPROPRIATE BOX
☒ This is initial filing
☐ Change in data previously reported

3. THIS POLITICAL COMMITTEE ☐ IS ☒ IS NOT A CONTINUING ORGANIZATION

DATE OF GENERAL OR SPECIAL ELECTION Nov 1981

4. PURPOSE OF CAMPAIGN, COMMITTEE OR ORGANIZATION

☐ Candidate or committee organized principally to support one candidate.
Candidate's name (last) _____ (first) _____ (M I) _____
Office sought _____
City or district _____ (County) _____ Party, if partisan office _____

☐ Political party organization, central committee, caucus, district or precinct club, etc.
Party affiliation _____ If supporting entire party ticket check here ☐
Otherwise attach list of candidates to be supported.

☒ Ballot proposition committee (initiative, referendum, bonds, special levy, recall or similar issue.)
Name of proposition VOTER APPROVAL FOR BOND SALES Ballot number _____ For or against _____

☐ Political action committee identified with, or whose contributors are employees or members of, a business, association, labor union or similar organization.
Name of business, association, union, etc. _____

☐ Other. Describe purpose _____

5. ALL RELATED OR AFFILIATED COMMITTEES, ORGANIZATIONS, BUSINESSES, ASSOCIATIONS, ETC.

NAME	ADDRESS	RELATIONSHIP OR AFFILIATION
NONE	—	—

6. OFFICERS OR RESPONSIBLE LEADERS OF COMMITTEE

NAME	ADDRESS	TITLE
STEVE ZEMKE	2205 E. HOWE, SEATTLE, WA 98112	Chairperson

7. CAMPAIGN OR COMMITTEE TREASURER (CANDIDATE MAY SERVE AS TREASURER)

NAME	ADDRESS	PHONE NO
STEVE ZEMKE (TEMPORARY)	2205 E HOWE SEATTLE, WASH	324-4368

8. CAMPAIGN DEPOSITORY

NAME	ADDRESS
NOT YET SELECTED	—

9. ADDITIONAL DEPOSITORIES (NO MORE THAN ONE PER COUNTY) AND DEPUTY CAMPAIGN TREASURERS

☒ NONE ☐ LISTED ON ADDITIONAL SHEET

10. CAMPAIGN RECORDS ARE OPEN FOR PUBLIC INSPECTION EIGHT DAYS PRIOR TO EACH ELECTION AT ADDRESS 2205 E HOWE, SEATTLE, WA 98112 HOURS 9 AM TO 11 AM

CONTINUE ON REVERSE

Exhibit G

11. FAIR CAMPAIGN PRACTICES. I have read the attached Code of Fair Campaign Practices.
- [X] I (We) will voluntarily comply with the principles of the Code.
- [ ] I (We) do not choose to subscribe to some or all of the provisions of the Code.

12. CAMPAIGN FINANCIAL REPORTING

Check one of the options described below. If option I or II is not checked, the candidate (committee) is obligated to follow option III, Full Reporting, and to report fully and in detail contributions and expenditures on the dates prescribed in the public disclosure law.

- [ ] **Option I** MINI REPORTING. (For candidates only. - Not available to political committees.)
  1. I will limit contributions or expenditures during this campaign to my filing fee of $_____ plus no more than $200 which includes charges for the voters pamphlet.
  2. These fees are _____ paid from my personal funds; or _____ paid by contributions.
  3. I will accept no contribution over $100 from a single source except my personal funds.
  4. I understand that no other campaign financial reports (PDC forms C-3 or C-4) are required.
  5. I understand that I am required to report my personal financial affairs (PDC form F-1 or F-1A).

- [ ] **Option II** ABBREVIATED REPORTING. (For candidates and political committees.)
  I (this committee) will use the Abbreviated Reporting System. I (we) will limit aggregate contributions and aggregate expenditures to $1,000 and will accept no contribution over $100 from a single source except from the candidates personal funds.

- [X] **Option III** FULL REPORTING. (For candidates and political committees.)
  I (this committee) will use the Full Reporting System.

*SEE ATTACHED INSTRUCTIONS AND PDC CAMPAIGN REPORTING GUIDE FOR DETAILED EXPLANATION OF OPTIONS.

13. STATEMENT AS TO DISTRIBUTION OF ANY SURPLUS CAMPAIGN FUNDS after the campaign or in the event of dissolution of committee. (Distribution must be reported as an expenditure on C-4 report.)
- [ ] Return to contributors
- [ ] Donate to registered charity
- [ ] Hold for future election campaign
- [ ] Give to other candidates or committee ($2,000 maximum)
- [ ] Reimburse candidate for loans or lost earnings (substantiation must accompany C-4 which reports payment.)
- [ ] Donate to State General Fund
- [X] Other. Specify:

Citizen organizations of similar purposes and goals as ours

14. I (We) understand that a record must be kept of the name, address and amount of each contributor and the name, amount and purpose of each expenditure. I (We) also understand that campaign financial records must be open for public inspection for two hours daily, Monday thru Friday, the last eight days prior to the election, as designated in line 10 of this form.

15. I (WE) UNDERSTAND THAT EXCEEDING THE LIMITATIONS OF THE OPTION CHOSEN WITHOUT NOTIFICATION AND PERMISSION PROVIDED IN CHAPTER 390-16 WASHINGTON ADMINISTRATIVE CODE PLACES ME (US) IN VIOLATION OF THE ACT AND SUBJECTS ME (US) TO THE CIVIL SANCTIONS OUTLINED IN RCW 42.17.390.

CERTIFICATION

I HEREBY CERTIFY THAT THE ABOVE IS A TRUE, COMPLETE AND CORRECT STATEMENT IN ACCORDANCE WITH CHAPTER 42.17 RCW.

16. CANDIDATE'S SIGNATURE	DATE	17. TREASURER'S SIGNATURE (IF A POLITICAL COMMITTEE)	DATE
		Stephen Funke	12/15/80

SEND ORIGINAL COPY OF THIS REPORT TO: PUBLIC DISCLOSURE COMMISSION
403 EVERGREEN PLAZA BLDG.
OLYMPIA, WA 98504

SEND DUPLICATE COPY TO: COUNTY AUDITOR WHERE CANDIDATE LIVES.
POLITICAL COMMITTEES SEND DUPLICATE TO AUDITOR WHERE TREASURER LIVES.

Exhibit H

State of Washington

JOHN SPELLMAN, Governor

OFFICE OF THE GOVERNOR

- - - - - - - - - - -

OFFICE OF

THE GOVERNOR

STATE OF WASHINGTON

- - - - - - - - - - -

A PROCLAMATION BY THE GOVERNOR:

WHEREAS, under the provisions of Section 1 and 1(a) of Article II of the Constitution of the State of Washington, there was submitted to the electorate of the State of Washington for their approval or rejection at the state general election held on the 3rd day of November, 1981, an initiative measure, identified as Initiative Measure 394 and entitled:

> "Shall public agencies obtain voter approval prior to issuing bonds for the construction or acquisition of major public energy projects?";

WHEREAS, Ralph Munro, as Secretary of State, has on the 3rd day of December, 1981, canvassed the votes cast upon this measure at that state general election and certified that 532,178 votes were cast in favor of Initiative Measure 394 and 384,419 votes were cast against Initiative Measure 394; and

WHEREAS, as appears from this certification, a majority of the votes cast on this proposition at the state general election were in favor of its adoption;

NOW, THEREFORE, I, John Spellman, Governor of the State of Washington, do hereby proclaim that the proposed law as set forth in Initiative Measure 394 was approved by the voters of the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed this 3rd day of December, 1981

John Spellman
Governor

ATTEST:

Ralph Munro
Secretary of State

Exhibit I

FILED
MAR 20 19[illegible]

ARTICLES OF INCORPORATION

The undersigned, for the purpose of forming a corporation under the non-profit laws RCW 24.03, of the State of Washington, state:

I

The name of the corporation shall be Don't Bankrupt Washington.

II

The term of existence shall be in perpetuity.

III

The purposes for which the corporation is organized is as follows:

1. Provide a process for citizen review and approval of proposed financing for major public energy projects.

2. Encourage development of energy sources that are cost effective and dependable.

3. Work for cost effective electrical energy rates.

4. Any additional purposes compatible with the first three purposes and in conformance with the IRS Code, Section 501(c)(4) and RCW 24.03.

IV

The address of the initial registered office of the corporation shall be:

1812 E. Madison Street, Seattle, Wa. 98122.

The name of the initial registered agent at the same address shall be:

Steve Zemke.

V

The number of directors constituting the initial Board of Directors shall be 5.

The names and addresses of the persons who are to serve as the initial directors are as follows:

Steve Zemke 2205 E. Howe St. Seattle, Wa. 98112

Bill Harrington 5640 45 SW Seattle, Wa. 98136

Joan Pelley 2508 SW 144 Pl. Seattle, Wa. 98166

Paul R. Ballard 18417 47 Pl. NE Seattle, Wa. 98155

Pam Sturgeon 7711 81st Ave. NE Seattle, WA. 98115

VI

In the event of dissolution of the corporation, the net assets are to be distributed as follows: to other organizations working to end the blank check spending policy of the Washington Public Power Supply System and working to maintain public power in the Pacific Northwest.

March 2, 1981	[signature]	2205 E. Howe St. Seattle, Wa. 98112
	[signature]	5640 45 Ave. SW Seattle, Wa. 98136
	[signature]	2508 SW 144 Pl. Seattle, Wa. 98166
	[signature]	18417 47 Pl. NE Seattle, Wa. 98155
	[signature]	7711 1st Ave. NE Seattle, Wa. 98115

Signed before me and notorized on March 2, 1981

[signature]

Melissa A. Thompson

notary for the County of King

D308253
FILE NUMBER

DOMESTIC

STATE OF WASHINGTON DEPARTMENT OF STATE

I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

ARTICLES OF INCORPORATION

of DON'T BANKRUPT WASHINGTON

a domestic corporation of Seattle, Washington,

was filed for record in this office on this date, and I further certify that such Articles remain on file in this office.

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol.

March 20, 1951

RALPH MUNRO
SECRETARY OF STATE

COPY RECEIVED

FEB 18 1982

DAVIS, WRIGHT, TODD, RIESE & JONES

By _____

RECEIVED
JUDGE'S OFFICE

FEB 18 1982

RECEIVED

FEB 18 1982

Office of Clerk
U. S. District Court
Tacoma, Washington

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, et al., Plaintiffs, v. THE STATE OF WASHINGTON, et al. Defendants. THE DON'T BANKRUPT WASHINGTON COMMITTEE, Applicant for Intervention as Defendant	Civil Action No. C 81-947T MEMORANDUM OF THE DON'T BANKRUPT WASHINGTON COMMITTEE IN SUPPORT OF MOTION TO INTERVENE AS A DEFENDANT

The Don't Bankrupt Washington Committee [hereinafter "the Committee"] submits this memorandum in support of its motion to

Califano, Ross & Heineman
1575 Eye Street, N.W.
Washington, D.C. 20005
(202) 789-8800

Riddell, Williams,
Bullitt & Walkinshaw
4400 Seattle-First National
Bank Building
1001 Fourth Avenue
Seattle, Washington 98154
(206) 624-3600

LAW OFFICES
CALIFANO, ROSS & HEINEMAN
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

intervene as a defendant in the above-captioned matter which challenges the validity of Initiative 394. The Committee is a non-profit corporation established under the laws of Washington. See Appendix A, ¶ 6, Affidavit of Steve Zemke, Chairperson, Don't Bankrupt Washington Committee [hereinafter "Appendix A"].

"But for" the Don't Bankrupt Washington Committee, Initiative 394 would not exist. The Committee is the citizens' organization which drafted the measure, obtained the 160,000 signatures needed to place the Initiative on the ballot, provided publicity and arguments in favor of the Initiative, and raised the funds necessary to wage a vigorous campaign for its passage in the face of well-funded opposition. Appendix A, ¶¶ 4-18. The result of this sustained effort is the measure now being challenged in this Court -- Initiative Measure 394, incorporated in Chapter 6, 2nd. Ex. Sess, Laws of 1981.

The initiative process established by the laws of Washington, Washington State Constitution, Article II, § 1(a), allows the people of the State to speak directly, through a state-wide election, to significant issues affecting their lives. Those who serve as "drafter, sponsor, organizer and campaigner" for initiatives are vital to the effective operation of this instrument of direct democracy. Seattle School District No. 1 v. Washington, 473 F. Supp. 996, 1001 (W.D. Wash. 1979).[1/] Their motions for intervention as defendants have been granted when the initiative that

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1/ The decision of the District Court was affirmed in part and reversed in part by the Court of Appeals for the Ninth Circuit, 633 F.2d 1338 (1980). The Court of Appeals did not disturb the District Court's ruling on the motion to intervene.

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they helped enact into law is challenged in Federal court. Id. See also, Fritz v. Gorton, 517 P.2d 911, 914-15, 83 Wash. 2d 275 (Sup. Ct. Wash.) (en banc) appeal dismissed sub nom. Simmons v. Gorton, 417 U.S. 902 (1974) (citizens groups supporting initiative allowed to intervene to assist Attorney General in defense; importance of initiative power to ensure public accountability).[1/]

The Don't Bankrupt Washington Committee is in precisely the same position as parties which this court has allowed to participate as Intervenor-defendants, pursuant to Rule 24 of the Federal Rules of Civil Procedure, in suits involving legal challenges to citizen initiatives enacted in state-wide elections.

I. THE COMMITTEE AND INITIATIVE 394

The Don't Bankrupt Washington Committee was organized in the fall of 1980 and incorporated in March, 1981 as a non-profit Washington corporation under the name "Don't Bankrupt Washington." This organization was formed in response to mounting public concerns over the efforts of the Washington Public Power Supply System [hereinafter "WPPSS"] to construct five nuclear power plants. Appendix A, ¶¶ 4, 5. The Committee was comprised of citizens of Washington, including utility ratepayers. Id. ¶¶ 6, 20. These citizens feared that the well-documented pattern of WPPSS mismanagement, schedule delays, enormous cost overruns, and the resulting need for repeated, massive public borrowings through bond issues would, in the decades to come, place an intolerable financial

---

1/ The specific issue of the right of a sponsor of an initiative to intervene was presented in a writ of certiorari and decided by the Washington Court of Appeals in Fritz v. Gorton, 8 Wash. App. 658, 509 P.2d 83 (1973).

LAW OFFICES

burden on the utility ratepayers of Washington. Id. ¶ 4. See also Report of Washington State Senate Energy & Utilities Committee, Causes of Cost Overruns and Schedule Delays on the Five WPPSS Nuclear Power Plants (1981) [hereinafter "Senate Report"]. The Committee also feared that these problems could affect the security of the WPPSS bonds already issued and thus have an impact on the WPPSS financial structure that, ultimately, had to be supported over a suitable period of time by ratepayers. Id. ¶ 8.

. The Committee's concern was heightened by WPPSS's lack of public accountability. Under the law as it then existed, WPPSS did not need to obtain citizen approval before it incurred literally billions of dollars of indebtedness. See Appendix A, Exhibit E (Attorney General's Official Explanatory Statement). Indeed, under conservative assumptions, the cost of WPPSS's Projects 1, 2 and 3 had risen from an original estimate of $2.1 billion to $12.1 billion by mid-1981, and the estimated cost of all five WPPSS projects had ballooned from $4.1 billion to about $24 billion. These extraordinary 1981 cost estimates did not include interest on the debt. Moreover, the Committee believed that the decision of WPPSS to press for construction of all five plants might, in light of the changing economic conditions and energy needs of the Pacific Northwest, no longer be economically justifiable. See also Senate Report, supra, at 58-60.

To address these concerns, the Don't Bankrupt Washington Committee drafted Initiative 394 in January, 1981. Appendix A, ¶ 8. The Initiative had two major purposes with respect to WPPSS. First, it sought to render the WPPSS' Board of Directors accountable to utility ratepayers by requiring voter approval

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[illegible]
1919 EYE STREET, N.W.
WASHINGTON, D.C. 20006

of future borrowings for those WPPSS projects whose costs had exceeded the agency's original cost projections by at least 200 percent. Second, in light of the unprecedented cost overruns, it sought to insure the economic integrity of those projects by requiring that WPPSS conduct a cost effectiveness study -- and that the public be allowed to comment on that study -- before WPPSS could seek authority from the ratepayers to issue additional bonds. The Committee believed that the Initiative would thus benefit both the utility ratepayers and the holders of WPPSS bonds by insuring that future WPPSS borrowings were financially sound. Appendix A, ¶ 8.

The Committee's efforts to secure voter approval of Initiative 394 were long and arduous. Id., ¶¶ 4-18. After drafting and revising the Initiative, id., ¶¶ 9-11, the Committee had to obtain at least 160,000 voter signatures in order to have the Initiative placed on the ballot. To meet this goal, the Committee used four full-time staff members and enlisted the aid of approximately 2,000 volunteers. Following a massive and expensive State-wide canvassing effort that lasted several months and that cost $25,000, id. ¶ 13, the Committee filed with the Secretary of State of Washington 11,470 petitions containing 185,984 signatures. Id.

After the Secretary of State certified the sufficiency of these signatures, the Don't Bankrupt Washington Committee assumed and exercised primary responsiblity over the campaign to secure passage of Initiative 394. Id., ¶ 15-16. This campaign, like the initial effort to have the Initiative placed on the ballot, was costly and time consuming. The Committee solicited contributions totaling approximately

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WASHINGTON, D.C. 20006

$215,000 from over 3,400 donors. Moreover, the Committee employed seven full time and several part time workers, as well as approximately 2,000 volunteers, in the campaign effort. Id. Through television and radio statements, as well as through an extensive door to door and leafleting campaign, the Committee argued the merits of Initiative 394. None of the defendants named in the complaint publicly supported Initiative 394, and one of them, the Governor, publicly opposed it. Id., ¶ 17. As a result of the Committee's effort, the voters of Washington on November 3, 1981 approved the measure by an overwhelming margin -- 532,178 voters to 384,419 votes (58 percent to 42 percent). On December 3, 1981, the Governor of Washington announced that the Secretary of State had certified its passage. Id. Exhibit H.

Because well-financed parties strongly opposed the Initiative and reportedly spent $1.3 million in that effort, id at ¶ 19, the Don't Bankrupt Washington Committee realized that a court challenge to the measure was almost certain to be brought. To insure that the Committee's extraordinary interest in the Initiative was represented and to help defend the overwhelming mandate accorded the Initiative by the voters of Washington, the Committee determined that it would seek to intervene as a defendant in any suit challenging the validity of the Initiative. Id.

Because of its unique, indeed indispensable, role in helping to secure passage of Initiative 394, the Committee respectfully submits that it satisfies the requirements for intervention of right pursuant to Rule 24(a), Fed. Rules of Civ. Pro., as well as the requirements for permissive intervention contained in Rule 24(b).

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[illegible]
[illegible]
[illegible]

II. INTERVENTION OF RIGHT

The requirements for intervention of right are set forth in Rule 24(a), which provides in pertinent part:

> Upon timely application, anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

In interpreting this language, courts have frequently emphasized the need for a liberal construction of Rule 24, see, e.g., Clark v. Sandusky, 205 F.2d 915, 919 (7th Cir. 1953), and have resolved doubts in favor of permitting intervention. Corby Recreation, Inc. v. General Electric Co., 581 F.2d 175, 177 (8th Cir. 1978); Kozak v. Wells, 278 F.2d 104, 111-112 (8th Cir. 1960).

The Committee satisfies the four requirements set forth in Rule 24(a), especially in light of the "liberal construction" which courts have given to the Rule.

A. Timely Application.

The Committee clearly has filed this motion to intervene in a timely manner, as required by Rule 24(a). Plaintiffs filed their complaint on December 4, 1981. The answer of the defendants named in the Complaint was not due until 10 days after disposition of their motion to dismiss the action for improper venue or, in the alternative, to transfer the action to the District Court for the Western District of Washington. Fed. R. Civ. Pro. 12(a). This venue motion was decided by the United States District Court for the

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Eastern District of Washington on February 11, 1982, when the case was ordered transferred to this Court. The Committee is filing its motion to intervene and its Answer at virtually the same time that the Attorney General is filing an Answer on behalf of the named defendants.

Obviously, at this nascent stage of the litigation, granting the Committee's motion to intervene will in no way prejudice the parties or delay the disposition of this law suit. Indeed, permitting the Committee to intervene as defendant may well speed the resolution of this litigation in light of the Committee's special role in formulating, sponsoring and securing passage of Initiative 394. See Seattle School District No. 1 v. Washington, 473 F. Supp. 996 (W.D. Wash. 1979); Fritz v. Gorton, 8 Wash. App. 658, 509 P.2d. 83 (Ct. Appls. Wash. 1973).

B. The Committee's Interest in the Action.

The Committee clearly satisfies the second requirement of Rule 24(a) that the intervenor have "an interest relating to the property or transaction which is the subject of the litigation." The Court of Appeals for the Ninth Circuit, in construing this portion of Rule 24(a)(2), has noted that the interest test is "basically a threshold one, rather than the determinative criterion for intervention." County of Fresno v. Andrus, 622 F.2d 436, 438 (9th Cir. 1980). Moreover, the Court of Appeals emphasized that the primary purpose of this "interest" requirement was to serve as a "'practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" Id., quoting Nuesse v.

Camp, 385 F.2d 694, 700 (D.C. Cir. 1967).[1/]

As the complaint makes clear, the only "subject of litigation" is the validity of Initiative 394. The Committee's interest in defending that Initiative is surely at least as direct, intense and comprehensive as the interests of any of the defendants named in plaintiffs' complaint. Each of the individuals named by plaintiffs to defend Initiative 394 is a defendant in this suit solely by virtue of his official capacity or the ministerial functions that he may be required to perform under Initiative 394.[2/] The Committee, in contrast, drafted Initiative 394, obtained sufficient signatures to have it placed on the

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1/ As a leading commentator has noted, the "central purpose of the 1966 amendment [to Rule 24] was to allow intervention by those who might be practically disadvantaged by the disposition of the action and to repudiate the view . . . that intervention must be limited to those who would be legally bound as a matter of res judicata." Wright & Miller, 7A Federal Practice and Procedure § 1908 at 514 (footnotes omitted).

2/ Defendant Verner Miller, County Auditor of Benton County, has no strong, direct interest in defending the validity of Initiative 394. His involvement, at best, relates only to local elections that might be held in Benton County pursuant to the Initiative. Defendant Ralph Munro, Secretary of State of the State of Washington, is involved in this litigation only because he is required to organize certain statewide as opposed to local elections which may be required by the Initiative. Defendant John Spellman, Governor of the State of Washington, publicly opposed the passage of Initiative 394. Initiative 394 does not create nor require the performance by him of any additional duties not previously required by law. Defendant Kenneth Eikenberry, Attorney General of the State of Washington, is present in this litigation to fulfill his legal obligation to represent the State and its officers and employees when they are sued, an obligation which must be discharged with respect to all the laws in the Washington State Code. RCW 43.10.030.

ballot, and campaigned vigorously for its passage.[1/]

The Court of Appeals for the Ninth Circuit, in County of Fresno v. Andrus, supra, specifically concluded that intervention under Rule 24(a)(2) was appropriate under closely analogous circumstances. In that case, National Land for People, Inc. (NLP), a small organization of farmers, had successfully sued the Secretary of the Interior to compel him to promulgate certain regulations. When the Secretary promulgated those regulations and was subsequently sued by the County of Fresno and other plaintiffs, NLP sought to intervene as a defendant under Rule 24(a). In reversing the District Court's denial of NLP's motion to intervene, the Court of Appeals concluded that the "interest" component of Rule 24(a)(2) was satisfied because "NLP in fact is responsible for the regulations being promulgated in the first instance." 622 F.2d at 438. The Committee stands in a very analogous position, since the Committee, in almost every respect, is "responsible for" the formulation, presentation and voter approval of Initiative 394. The Committee therefore clearly has a Rule 24(a)(2)

1/ As the sponsor of Initiative 394, the Committee filed the proposed measure with the Secretary of State, pursuant to RCW 29.79.010. It conferred with the Code Reviser as to the appropriate style, form and wording of the measure, pursuant to RCW 29.79.015. When the measure was assigned a number and a title, it was the responsibility of the Committee to have petitions printed, and to comply with the technical requirements of Chapter 29.79 RCW regarding the form of the petitions and the procedures for collecting signatures. The Committee was also vitally concerned with and involved in formulating the statements in support of the measure which were included in the Official Voter's Pamphlet, pursuant to Chapter 29.81 RCW. By filing as a political committee, the Committee assumed the responsibilities and potential liabilities imposed by Washington's Public Disclosure Law. See generally, RCW 42.17.030 -- RCW 42.17.130 and RCW 42.17.392 -- 42.17.400. See also, Appendix A, ¶¶ 9-11.

"interest" in defending that Initiative from attack.[1/]

C. Impairment of Ability to Protect Interest.

It is also apparent that the resolution of plaintiffs' action "may as a practical matter impair or impede" the Committee's ability to protect its interests within the meaning of Rule 24(a)(2). Plaintiffs concede the applicability of Initiative 394 to Washington Public Power Supply System Nuclear Projects 1, 2 and 3, see Complaint ¶ 24, and seek "a declaration that Initiative 394 is unconstitutional and invalid." Id., Prayer for Relief. Obviously, a decision in favor of plaintiffs will do more than simply "impair or impede" the Committee's interest in the Initiative. For the act to be held unconstitutional or otherwise unlawful would constitute a complete defeat for the Committee and those whom it represents. Moreover, a decision in favor of plaintiffs will also impair other specific interests which the Committee, as an

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1/ In fact, the Ninth Circuit Court of Appeals has concluded that the "interest" component of Rule 24 is satisfied in analogous cases where the link between the intervenor and the subject of the litigation is considerably less direct and intense. In Idaho v. Freeman, 625 F.2d 886 (9th Cir. 1980), the Court of Appeals concluded that the National Organization of Women (NOW) could intervene as defendant under Rule 24(a) in a suit brought by Idaho and Arizona challenging federal procedures for ratification of the proposed Equal Rights Amendment (ERA). The Court reasoned that NOW's "interest in the continued vitality of ERA" satisfied the "interest" component of Rule 24. Surely, if, under the Ninth Circuit's analysis, NOW's interest in an amendment proposed by Congress is sufficient to justify intervention, the Committee's interest in an initiative which it drafted, campaigned for, and secured passage of must also satisfy the "interest" test of Rule 24(a).

See also, Fritz v. Gorton, 8 Wash. App. 658, 509 P.2d 83, 85-86 (Ct. Appls. Wash. 1973) (broad approach to "interest" requirement and sponsors of initiative have special interest).

organization comprised primarily of utility ratepayers, sought to advance through the Initiative. Ratepayers ultimately bear the burden of WPPSS's debts, and, if the Initiative is overturned, they will lose the opportunity to have cost effectiveness studies made of proposed expenditures and to have a vote of ratepayers on debt limits for the additional expenditure of funds for the construction of such facilities.

In analogous circumstances, the Court of Appeals for the Ninth Circuit has readily concluded that the "impairment" requirement of Rule 24(a)(2) was satisfied. For example, in County of Fresno v. Andrus, supra, the Court found that the interest of National Fund for People, Inc. would be impaired, within the meaning of Rule 24(a), if it was denied intervention in a suit challenging the promulgation of regulations it had forced, through an earlier suit, to be issued in the first place. 622 F.d at 438. In Idaho v. Freeman, supra, page 10, note 1, the Court concluded that the National Organization of Women's interest in the continued vitality of the Equal Rights Amendment "would as a practical matter be significantly impaired by an adverse decision," in a suit brought by States challenging federal procedures affecting the States' vote on the Amendment. 625 F.2d at 887. Because the Committee has an analogous, if not stronger, interest in the subject matter of this litigation, there can be little doubt that the "impairment" requirement of Rule 24(a)(2) is met.

D. Adequacy of Representation.

If the first three requirements enumerated in Rule 24(a) -- a timely application, an interest in the subject of the litigation, and a potential impairment of the ability to protect that interest -- are satisfied, intervention is of right "unless the applicant's interest is adequately represented by existing parties." The United States Supreme Court, in addressing this

requirement, has cautioned against an unduly restrictive interpretation.

> "The requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n. 10 (1972).

See also, Fritz vi Gorton, 8 Wash. Appls. 658, 509 P.2d. 83, 86 (Ct. Appls. Wash. 1973) (burden on intervenor "minimal").

Similarly, in County of Fresno v. Andrus, supra, the Court of Appeals for the Ninth Circuit has ruled that:

> "[a] would-be intervenor is adequately represented if: (1) the interests of a present party to a suit are such that it will undoubtedly make all of the intervenor's arguments; (2) the present party is capable of and willing to make such arguments; and (3) the intervenor would not offer any necessary element to the proceedings that the other parties would neglect." 622 F.2d at 438-439. (Emphasis added).

The Court of Appeals has also observed that the burden of establishing that representation may be inadequate "is not a heavy one." Smith v. Pangilinan, 651 F.2d 1320, 1325 (9th Cir. 1981). Finally, courts have concluded that the willingness of the potential intervenor to assume the costs and burdens of litigation, as well as the support of the party on whose behalf intervention is sought, are factors that aide a finding that representation of the potential interventor's interest may not be adequate if intervention is denied. Wright & Miller, supra, § 1909, at 522-523; Smith v. Pangilinan, supra, 651 F.2d at 1325.[1/]

1/ Moreover several courts and commentators have concluded that once a potential intervenor has satisfied the first three requirements of Rule 24(a), the burden of persuasion shifts to those parties opposing intervention to show that the representation of the potential intervenor is adequate. Wright & Miller, 7A Federal Practice and Procedure § 1909, at 521; Smuck v. Hobson, 408 F.2d 175, 181 (D.C. Cir. 1969); Nuesse v. Camp., supra, 385 F.2d at 702.

The Committee recognizes, of course, that the Attorney General of the State of Washington is named as a defendant and is required by statute to defend the Initiative. RCW 43.10.030. The Committee is also aware of decisions by several courts suggesting that, absent a showing of collusion or bad faith, a State's Attorney General or similar official is usually presumed capable of adequately representing the citizenry of the State.[1/] Moreover, the Committee does not wish to suggest that the Attorney General will not discharge his statutory duty to defend the Initiative.

Nonetheless, analysis of the three "conditions" set out by the Court of Appeals in County of Fresno v. Andrus for determining "adequacy of representation" in the technical, Rule 24(a)(2) sense, page 13, supra, reveals that none of those conditions is satisfied in this litigation and thus intervention of right should be granted. It should be emphasized that, if only one of those three conditions is not satisfied, intervention of right is required.

First, in light of plaintiffs multiple attacks against Initiative 394 -- the Complaint contains seven separate counts and numerous sub-theories -- there can be no assurance that the named defendants will "undoubtedly" raise all of the arguments in favor of the Initiative that the Committee seeks to advance. See County of Fresno v. Andrus, supra, 622 F.2d at 438-439; National Resources Defense Council v. Costle, 561 F.2d 904, 911-913 (D.C. Cir. 1977); New York Public Interest Research Group, Inc. v. Regents of Univ. of State

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1/ See, e.g., Pennsylvania v. Rizzo, 530 F.2d 501, 505 (3d Cir.), cert. denied, 426 U.S. 921 (1976); Illinois v. Bristol-Myers Co., 470 F.2d 1276 (D.C. Cir. 1972).

of N.Y., 516 F.2d 350, 352 (2d Cir. 1975). This case raises important statutory and State and Federal constitutional questions of first impression. Given the multiple legal attacks directed at Initiative 394 raising novel questions of law, it can hardly be certain, and indeed is not likely, that the named defendants will "undoubtedly" present to the Court all the legal theories and arguments which the Committee, as intervenor-defendant, would advance. Similarly, although the Committee shares the desire of the plaintiffs and named defendants to stipulate to as many facts as possible and to dispose of the litigation on preliminary motions if possible, this controversy arises out of an extraordinarily complex factual context. Again, it is not likely that the named defendants will "undoubtedly" assess the relationship and relative importance of the facts in the way that the Committee might present them. In sum, in a multi-count test litigations of this type, there is a reasonable likelihood that the intervenor-defendant will present important additional arguments on the law and the facts.

Second, as noted in the Memorandum of State of Washington in Support of Motion to Dismiss or Transfer, filed by the Attorney General, the State of Washington is "in a fairly severe fiscal situation." Memorandum at 8. The Attorney General is charged with responsibility for a wide range of litigation involving the State of Washington, and, given the State's fiscal problems, must inevitably make difficult decisions concerning the amount of resources to be devoted to a particular case. In contrast, the fundamental concern of the Committee is defending the validity of Initiative 394, and the Committee can focus all of the resources at its disposal to insure that the Initiative is ultimately upheld.

Thus, to the extent that the resources of the State available to defend the Initiative are limited, the named defendants may not be "capable" of making all relevant arguments, County of Fresno v. Andrus, supra, and the Committee therefore can serve as a willing and necessary co-defendant in this litigation.

Indeed, attorneys for the Committee and the named defendants have already had productive initial discussions about the litigation which suggest that a creative collaboration and meaningful division of labor with respect to the highly complex set of legal and factual issues could result if the Committee's motion to intervene is granted. For example, because some counsel for the Committee are located in Washington, D.C., they may have greater access, at a reduced cost, to legal and factual materials in that city (i.e., relating to the Federal role in the WPPSS projects) or in New York (i.e., bond analysts, investment bankers, and bond counsel).

Third, the Committee believes that it would "offer [a] necessary element to the proceedings." County of Fresno v. Andrus, supra, 622 F.2d at 439. The Committee is in a unique position in that its efforts in large part constitute the legislative history of Initiative 394. The Washington State Supreme Court, in construing initiative measures, has emphasized the need to ascertain the collective intent of the voting populace, and state courts have looked to a variety of sources in seeking that intent. Washington State Department of Revenue v. Hoppe, 512 P.2d, 1094, 82 Wn. 2d 549, (1973); Fritz v. Gorton, 517 P.2d 911, 917-919, 83 Wash. 2d. 275 (Sup. Ct. Wash 1974) (en banc). To the extent that the interpretation or legislative history of the Initiative are in issue, the Committee is in a unique position to assist the Court. It has the ability, possessed by no other party

to this litigation, to represent most comprehensively the public concerns and the history that led to the passage of the Initiative. See, Bass v. Richardson, 338 F. Supp. 478, 492 (S.D.N.Y. 1971).[1/]

Accordingly, the Committee's motion to intervene as of right should be granted pursuant to Rule 24(a)(2), Fed. R. Civ. Pro.[2/] As noted, to the extent that this Court regards the question as a close one, it should, consistent with established judicial practice, resolve such doubts in favor of permitting intervention. Corby Recreation, Inc. v. General Electric Co., supra, 581 F.2d at 177; Kozak v. Wells, supra, 278 F.2d at 111-112.

1/ Moreover, as noted above, Washington, D.C. counsel for the Committee have greater access to legal and factual materials in Washington and New York than attorneys for the named defendants.

2/ Other federal courts, in evaluating the "adequacy of representation" question, have looked at the respective "interests" of the named defendants and the intervenor-defendant. These courts have held that there is not adequacy of representation when the official, named defendants have general responsibility but not the particular interest of the intervenor-defendant. In other words, the respective interests, while not adverse, "are disparate," Planned Parenthood v. Citizens for Community Action, 558 F.2d 861 (8th Cir. 1977). See also, Associated General Contractors v. Secretary of Commerce, 459 F. Supp. 766 (C.D. Cal., 1978), judgment vacated on other grounds, 448 U.S. 908 (1980); National Farm Lines v. ICC, 564 F.2d 381 (10th Cir. 1977).

In this case, the interests of the named defendants, while not adverse, are clearly disparate from those of the Committee, because of the extensive "but for" role the Committee played in securing enactment of Initiative 394 and because the Committee has strongly held, publicly expressed views on the procedural (ratepayer vote) and substantive (cost-effectiveness) requirements that should be met before additional indebtedness is authorized by the WPPSS Board of Directors. None of the named defendants has expressed such views.

III. PERMISSIVE INTERVENTION

If the Court determines that intervention of right is not appropriate in this case, the Committee requests that it be granted permissive intervention under Rule 24(b). That Rule provides in pertinent part.

> "Upon timely application anyone may be permitted to intervene in an action: . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

The requirements for permissive intervention under Rule 24(b) are obviously less restrictive than the requirements of Rule 24(a). A court need only find the motion to intervene is timely, that it will not unduly delay the litigation or prejudice the existing parties and that the applicant's defense and the main action have at least one common question of law or fact.

The Committee's motion to intervene clearly satisfies the requirements of Rule 24(b).

First, as previously noted, the motion is timely. It is being filed, along with a proposed Answer, at virtually the same time as the Answer of the named defendants.

Second, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. As noted, the Committee shares the view, expressed by both the plaintiffs, see Memorandum of Plaintiffs in Opposition to Defendant's Motion to Dismiss or Transfer, at 5, and the defendants, see Memorandum of State of Washington in Support of Motion to Dismiss or Transfer, at 8, that every effort should be made to define sharply the relevant factual issues and stipulate to as many facts as possible. The Committee also shares the desire of the named parties to expedite the resolution of the litigation. Indeed, the Committee believes that the litigation

can be terminated on the basis of preliminary motions. The Committee believes that it can promote the speedy and fair adjudication of this case by working collaboratively with the Attorney General and his staff in defending the Initiative and by bringing to bear the special expertise of the Committee with respect to the intent, scope and effect of the Initiative.

Finally, the third requirement of permissive intervention under Rule 24(b) -- that the "applicant's claim or defense and the main action have a question of law or fact in common" -- is clearly met. The Committee seeks to address those questions raised by plaintiffs' challenge to the Initiative and to demonstrate that, under either Federal or State law, Initiative 394 is a lawful exercise of the initiative power and was soundly conceived by the Committee.

Because the requirements of Rule 24(b) are satisfied, the disposition of this motion to intervene is committed to the sound discretion of the Court. Wright & Miller, 7A Federal Practice and Procedure § 1904. However, in exercising this discretion, the Court should be guided by several considerations. First, the general presumption in favor of intervention applies. Id. In addition, the Court should consider whether intervention is favored by any of the present parties to the litigation. Id., § 1913. Finally, the Court should give attention to other factors such as the risk of unduly complicating the proceedings, the benefits to the potential intervenor, the ability of the intervenor to protect its interests through other means, and the advantages that the intervenor might bring to the proceedings. Id.

In this litigation, those factors guiding the Court's discretion all favor intervention. The named defendants

LAW OFFICES
[illegible]
1010 5TH STREET, N.W.
WASHINGTON, D.C. 20005

support intervention by the Committee, and their counsel has informed counsel for the Committee that they intend to file a memorandum in support of the Committee's motion to intervene. Counsel for the Committee and the counsel for the named defendants intend to develop an effective and efficient strategy for defending the Initiative and for bringing this litigation to a prompt and just conclusion.

In addition, the Committee's fundamental interest in the outcome of this litigation can only be protected through intervention.[1/] The Committee's presence will not add to the complexity of this suit, which plaintiffs already have complicated by virtue of their multi-count complaint. Indeed, the Committee would hope to work with the named defendants in the important but hardly routine task of bringing analytic clarity to the complex legal and factual issues of first impression presented by this litigation.

Finally, the Committee's unique role in the Initiative process is a special reason for this Court to exercise its discretion in favor of intervention. This Initiative, unlike most legislation, originated not in the halls of the Washington Legislature, but in the offices of a group of ordinary citizens. These citizens, through the initiative process, sought to address what they perceived to be a major problem which the Legislature had failed to remedy. They expended extraordinary time and effort to convert the Initiative from an idea into a law. Their actions represent direct democratic action to

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1/ Considerations that govern intervention under Rule 24(a)(2) -- the nature of the applicant's interest in the litigation and the threat of impairment of that interest -- are generally relevant to the exercise of the Court's discretion under Rule 24(b) and, on these issues, the Committee incorporates by reference its previous analysis. See pp. 8-12, supra.

ensure public accountability, just as the State's initiative authority contemplated. It would be totally contrary to this democratic ideal to exclude the very citizens who were responsible for the passage of the Initiative from participating in its defense in a court of law through counsel of their choice.

CONCLUSION

In Seattle School District No. 1 v. Washington, 473 F. Supp. 996 (W.D. Wash., 1979), the Citizens for Voluntary Integration Committee (CIVIC) -- the "drafter, sponsor, organizer, and campaigner" for Initiative 350 -- was allowed to intervene as a defendant in a suit challenging the Initiative that was brought against the Attorney General and other officials. Id. at 1001.[1/] The Committee stands in precisely the same position.

Accordingly, for the reasons set forth above, the Committee respectfully requests that its motion to intervene as Defendant be granted.

1/ Similarly, in Fritz v. Gorton, 8 Wash. App. 658, 509 P.2d 83 (Ct. Appls. Wash. 1973) a citizens group that had sponsored and actively supported an initiative was allowed to intervene as of right and to work with the Attorney General in defending the measure. The Washington rule of civil procedure governing intervention in State cases is identical to Rule 24, Fed. R. Civ. Pro. See, Washington Civil Rule 24.

LAW OFFICES

Respectfully submitted,

Stimson Bullitt

Riddell, Williams,
Bullitt & Walkinshaw
4400 Seattle-First National
Bank Building
1001 Fourth Avenue
Seattle, Washington 98154
(206) 624-3600

Joseph A. Califano, Jr.

Benjamin W. Heineman, Jr.

John A. Siliciano

Califano, Ross & Heineman
1575 Eye Street, N.W.
Washington, D.C. 20005
(202) 789-8800

Counsel for Intervenor-Defendant
The Don't Bankrupt Washington Committee

Dated: February 18, 1982

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WESTERN DISTRICT OF WASHINGTON
MAR 4 - 1982
BRUCE RIFKIN, CLERK
BY _____ DEPUTY

LODGED
MAR 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, et al.,

Plaintiffs,

v.

THE STATE OF WASHINGTON, et al.,

Defendants.

THE DON'T BANKRUPT WASHINGTON COMMITTEE,

Applicant for Intervention

Civil Action No. C 82-947

DRAFT ORDER

Upon consideration of the Motion to Intervene as a Defendant of the Don't Bankrupt Washington Committee, and the Memorandum of Points and Authorities in support thereof, it is hereby

ORDERED that the Motion to Intervene as a Defendant of the Don't Bankrupt Washington Committee is granted.

Dated this 2 day of March, 1982.

United States District Judge

LAW OFFICES
COVINGTON & BURLING
888 16TH STREET, N.W.
WASHINGTON, D.C. 20006

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